

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

THE RELIGIOUS SISTERS OF
MERCY, *et al.*,

Plaintiffs,
v.
No. 3:16-cv-386

XAVIER BECERRA, *et al.*,

Defendants.

THE CATHOLIC BENEFITS ASSOCIATION; DIOCESE OF FARGO; CATHOLIC CHARITIES NORTH DAKOTA; and CATHOLIC MEDICAL ASSOCIATION,

Plaintiffs,
v.
No. 3:16-cv-432

XAVIER BECERRA, *et al.*,

Defendants.

THE CATHOLIC BENEFITS ASSOCIATION PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND EXPENSES

As prevailing parties in this litigation Plaintiffs the Catholic Benefits Association, Diocese of Fargo, Catholic Charities of North Dakota, and Catholic Medical Association (collectively "CBA Plaintiffs" or "Plaintiffs") seek recovery of their reasonable attorney's fees, costs, and expert expenses pursuant to 42 U.S.C. § 1988(b). This case concerned HHS and EEOC's attempts to reinterpret Section 1557 of the Affordable Care Act and Title VII to require CBA Plaintiffs to perform and insure gender-transition services against Plaintiffs' sincerely held religious beliefs. CBA

Plaintiffs were successful in obtaining permanent injunctive relief against Defendants' Mandate under the Religious Freedom Restoration Act. *See* ECF Nos. 124, 170.

42 U.S.C. § 1988, which applies against federal agencies under 28 U.S.C. § 2412(b), authorizes attorney's fees for the prevailing party “[i]n any action or proceeding to enforce . . . the Religious Freedom Restoration Act.” 42 U.S.C. § 1988(b); *N. Cheyenne Tribe v. Jackson*, 433 F.3d 1083, 1085 (8th Cir. 2006). CBA Plaintiffs prevailed on their RFRA claim against HHS and EEOC at summary judgment and by obtaining permanent injunctive relief prohibiting Defendants from forcing CBA Plaintiffs to cover or perform gender-transition services. ECF Nos. 124, 170. Accordingly, § 1988(b) applies and CBA Plaintiffs are entitled to their reasonable attorney's fees and costs.

Over six years of litigation, counsel expended 2,344 hours after courtesy discounts made each month. In the further exercise of billing judgment, counsel has cut 243.25 hours from this total, or 10.4%. Based on prevailing market rates adjusted for the time-value of money, Plaintiffs request fees of \$1,022,378, expert fees of \$37,693.50, and costs of \$4,979.45.

In support of this request, counsel provides the following:

- Ex. 1 Declaration of L. Martin Nussbaum
- Ex. 1-A Costs
- Ex. 1-B Detailed Billings Reflecting Adjustments
- Ex. 1-C Total Hours Billed (by attorney and year)
- Ex. 1-D Net Hours Billed After Billing Judgment Deletions (by attorney and year)
- Ex. 1-E Primary Timekeepers Actual Hourly Rate by Year
- Ex. 1-F Lodestar Calculation based on Actual Hourly Rates Time Net Hours Billed
- Ex. 1-G Inflation Rated Based on Consumer Price Index (2017 through October 2023)
- Ex. 1-H Lodestar Calculation Based on Time-Valued Hourly Rate Times Net Hours Billed
- Ex. 1-I Resume of L. Martin Nussbaum
- Ex. 1-J Resume of Ian Speir
- Ex. 1-K Resume of Andrew M. Nussbaum
- Ex. 1-L Resume of Eric N. Kniffin

Ex. 1-M Resume of Matthew Mellema
Ex. 1-N Williams and Connolly (Kevin Baine) billing statement
Ex. 1-O Greenburg Traurig (Troy Eid) billing statement
Ex. 1-P Fees Related to Fee Petition
Ex. 1-Q Resume of Alec Afarian
Ex. 2 Declaration of Thomas B. Bair, esq.
Ex. 3 Declaration of Kevin T. Baine, esq.
Ex. 4 Declaration of Troy A. Eid, esq.

The declarations of Messrs. Nussbaum, Bair, Baine, and Eid, establish the reasonableness of the hours and rates requested by counsel. Exhibits 1-A to 1-H provide detail on the data underlying the motion. Exhibits 1-I to 1-M and 1-Q are the resumes of the primary timekeepers on the case. And Exhibits 1-N to 1-P relate to amounts related to the fee petition.

As explained in CBA Plaintiffs' memorandum in support of this motion, the amounts requested are well supported by precedent.

Accordingly, CBA Plaintiffs respectfully request that the Court award them for attorney's fees of \$1,022,378 and expenses of \$42,034.30.

Respectfully submitted December 11, 2023,

/s/ L. Martin Nussbaum

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